
By: **Senators Pinsky and Grosfeld**

Introduced and read first time: January 31, 2003

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Accountability Act of 2003**

3 FOR the purpose of prohibiting a certain public accounting firm that performs certain
4 audits for a certain securities issuer from providing certain non-audit services
5 to that issuer; authorizing a certain public accounting firm to provide certain
6 non-audit services for an audit client under certain circumstances; prohibiting a
7 certain public accounting firm from providing audit services to a certain
8 securities issuer if certain partners performed audit services for that issuer
9 during a certain time period; requiring a certain public accounting firm that
10 performs certain audits for a certain securities issuer to report certain
11 information to the audit committee of the issuer; prohibiting a certain public
12 accounting firm from providing audit services to a certain securities issuer if
13 certain officers of the issuer were employed by the public accounting firm and
14 participated in an audit of that issuer during a certain time period; providing
15 that an employer may not make, adopt, or enforce any rule, regulation, or policy
16 preventing an employee from disclosing certain information to a government or
17 law enforcement agency, if the employee has reasonable cause to believe that the
18 information discloses certain violations; prohibiting an employer from
19 retaliating against an employee for disclosing certain information, refusing to
20 participate in certain activities, or exercising certain rights; requiring an
21 employer to display a certain notice; establishing certain penalties for certain
22 employers; providing certain exceptions; requiring a procurement unit to require
23 a bidder or offeror to disclose certain information relating to employee
24 compensation; authorizing the State to disclose the information only if a person
25 is awarded a procurement contract; requiring the Office of the Attorney General
26 to establish and maintain a certain Whistleblower Hotline for a certain purpose;
27 requiring the Office to refer calls received on the hotline to the appropriate
28 government authority for review and possible investigation; providing for
29 confidentiality for certain calls received on the hotline; requiring certain
30 business entities that receive grants from a unit or instrumentality of State
31 government to disclose certain information relating to employee compensation;
32 defining certain terms; and generally relating to business entity accountability.

33 BY adding to

34 Article - Corporations and Associations

1 Section 11-5A-01 through 11-5A-05, inclusive, to be under the new subtitle
2 "Subtitle 5A. Auditor Independence"
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2002 Supplement)

5 BY adding to
6 Article - Labor and Employment
7 Section 3-708
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2002 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 13-205 and 13-210(b)
13 Annotated Code of Maryland
14 (2001 Replacement Volume and 2002 Supplement)

15 BY adding to
16 Article - State Government
17 Section 6-301 to be under the new subtitle "Subtitle 3. Whistleblower Hotline";
18 and 8-505
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2002 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Corporations and Associations**

24 **SUBTITLE 5A. AUDITOR INDEPENDENCE.**

25 11-5A-01.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) "ASSOCIATED PERSON" MEANS ANY INDIVIDUAL PROPRIETOR, PARTNER,
29 SHAREHOLDER, PRINCIPAL, ACCOUNTANT, OR OTHER PROFESSIONAL EMPLOYEE OF
30 A PUBLIC ACCOUNTING FIRM, OR ANY OTHER INDEPENDENT CONTRACTOR OR
31 ENTITY THAT, IN CONNECTION WITH THE PREPARATION OR ISSUANCE OF ANY AUDIT
32 REPORT:

33 (1) SHARES IN THE PROFITS OF, OR RECEIVES COMPENSATION IN ANY
34 OTHER FORM FROM, THAT FIRM; OR

35 (2) PARTICIPATES AS AGENT OR OTHERWISE ON BEHALF OF THE
36 ACCOUNTING FIRM IN ANY ACTIVITY OF THAT FIRM.

1 (C) "AUDIT" MEANS AN EXAMINATION OF THE FINANCIAL STATEMENTS OF AN
2 ISSUER BY AN INDEPENDENT PUBLIC ACCOUNTING FIRM IN ACCORDANCE WITH THE
3 RULES OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OR THE
4 SECURITIES AND EXCHANGE COMMISSION FOR THE PURPOSE OF EXPRESSING AN
5 OPINION ON THE STATEMENTS.

6 (D) "AUDIT COMMITTEE" MEANS:

7 (1) A COMMITTEE OR EQUIVALENT BODY ESTABLISHED BY AND AMONG
8 THE BOARD OF DIRECTORS OF AN ISSUER FOR THE PURPOSE OF OVERSEEING THE
9 ACCOUNTING AND FINANCIAL REPORTING PROCESSES OF THE ISSUER AND AUDITS
10 OF THE FINANCIAL STATEMENTS OF THE ISSUER; OR

11 (2) IF NO SUCH COMMITTEE EXISTS WITH RESPECT TO AN ISSUER, THE
12 ENTIRE BOARD OF DIRECTORS OF THE ISSUER.

13 (E) "AUDIT REPORT" MEANS A DOCUMENT OR OTHER RECORD:

14 (1) PREPARED FOLLOWING AN AUDIT PERFORMED FOR PURPOSES OF
15 COMPLIANCE BY AN ISSUER WITH THE REQUIREMENTS OF THE SECURITIES LAWS;
16 AND

17 (2) IN WHICH A PUBLIC ACCOUNTING FIRM EITHER:

18 (I) SETS FORTH THE OPINION OF THAT FIRM REGARDING A
19 FINANCIAL STATEMENT, REPORT, OR OTHER DOCUMENT; OR

20 (II) ASSERTS THAT NO SUCH OPINION CAN BE EXPRESSED.

21 (F) "NON-AUDIT SERVICES" MEANS ANY PROFESSIONAL SERVICES PROVIDED
22 TO AN ISSUER BY A REGISTERED PUBLIC ACCOUNTING FIRM, OTHER THAN THOSE
23 PROVIDED TO AN ISSUER IN CONNECTION WITH AN AUDIT OR A REVIEW OF THE
24 FINANCIAL STATEMENTS OF AN ISSUER.

25 (G) "PUBLIC ACCOUNTING FIRM" MEANS A PROPRIETORSHIP, PARTNERSHIP,
26 INCORPORATED ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY,
27 LIMITED LIABILITY PARTNERSHIP, OR OTHER LEGAL ENTITY THAT IS ENGAGED IN
28 THE PRACTICE OF PUBLIC ACCOUNTING OR PREPARING OR ISSUING AUDIT REPORTS.

29 (H) "REGISTERED PUBLIC ACCOUNTING FIRM" MEANS A PUBLIC ACCOUNTING
30 FIRM REGISTERED WITH THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD IN
31 ACCORDANCE WITH THE SARBANES-OXLEY ACT OF 2002.

32 11-5A-02.

33 (A) A REGISTERED PUBLIC ACCOUNTING FIRM OR ANY ASSOCIATED PERSON
34 OF THAT FIRM THAT PERFORMS FOR ANY ISSUER ANY AUDIT REQUIRED BY THE
35 SECURITIES EXCHANGE ACT OF 1934 OR THE RULES OF THE SECURITIES AND
36 EXCHANGE COMMISSION OR THE PUBLIC COMPANY ACCOUNTING OVERSIGHT

1 BOARD MAY NOT PROVIDE TO THAT ISSUER, CONTEMPORANEOUSLY WITH THE
2 AUDIT, ANY NON-AUDIT SERVICE, INCLUDING:

3 (1) BOOKKEEPING OR OTHER SERVICES RELATED TO THE ACCOUNTING
4 RECORDS OR FINANCIAL STATEMENTS OF THE AUDIT CLIENT;

5 (2) FINANCIAL INFORMATION SYSTEMS DESIGN AND IMPLEMENTATION;

6 (3) APPRAISAL OR VALUATION SERVICES, FAIRNESS OPINIONS, OR
7 CONTRIBUTION-IN-KIND REPORTS;

8 (4) ACTUARIAL SERVICES;

9 (5) INTERNAL AUDIT OUTSOURCING SERVICES;

10 (6) MANAGEMENT FUNCTIONS OR HUMAN RESOURCES;

11 (7) BROKER OR DEALER, INVESTMENT ADVISER, OR INVESTMENT
12 BANKING SERVICES; AND

13 (8) LEGAL SERVICES AND EXPERT SERVICES UNRELATED TO THE
14 AUDIT.

15 (B) A REGISTERED PUBLIC ACCOUNTING FIRM MAY ENGAGE IN ANY
16 NON-AUDIT SERVICE NOT DESCRIBED IN SUBSECTION (A) OF THIS SECTION,
17 INCLUDING TAX SERVICES, FOR AN AUDIT CLIENT ONLY IF THE ACTIVITY IS
18 APPROVED IN ADVANCE BY THE AUDIT COMMITTEE OF THE ISSUER.

19 11-5A-03.

20 A REGISTERED PUBLIC ACCOUNTING FIRM MAY NOT PROVIDE AUDIT SERVICES
21 TO AN ISSUER IF THE LEAD AUDIT PARTNER WHO HAS PRIMARY RESPONSIBILITY
22 FOR THE AUDIT OR THE AUDIT PARTNER RESPONSIBLE FOR REVIEWING THE AUDIT
23 HAS PERFORMED AUDIT SERVICES FOR THAT ISSUER IN EACH OF THE 5 PREVIOUS
24 FISCAL YEARS OF THAT ISSUER.

25 11-5A-04.

26 EACH REGISTERED PUBLIC ACCOUNTING FIRM THAT PERFORMS FOR ANY
27 ISSUER ANY AUDIT REQUIRED BY THE SECURITIES EXCHANGE ACT OF 1934 SHALL
28 TIMELY REPORT TO THE AUDIT COMMITTEE OF THE ISSUER:

29 (1) ALL CRITICAL ACCOUNTING POLICIES AND PRACTICES TO BE USED;

30 (2) ALL ALTERNATIVE TREATMENTS OF FINANCIAL INFORMATION
31 WITHIN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES THAT HAVE BEEN
32 DISCUSSED WITH MANAGEMENT OFFICIALS OF THE ISSUER, RAMIFICATIONS OF THE
33 USE OF THOSE ALTERNATIVE DISCLOSURES AND TREATMENTS, AND THE
34 TREATMENT PREFERRED BY THE REGISTERED PUBLIC ACCOUNTING FIRM; AND

1 (3) OTHER MATERIAL WRITTEN COMMUNICATIONS BETWEEN THE
2 REGISTERED PUBLIC ACCOUNTING FIRM AND THE MANAGEMENT OF THE ISSUER,
3 SUCH AS ANY MANAGEMENT LETTER OR SCHEDULE OF UNADJUSTED DIFFERENCES.
4 11-5A-05.

5 A REGISTERED PUBLIC ACCOUNTING FIRM MAY NOT PERFORM FOR AN ISSUER
6 ANY AUDIT SERVICE REQUIRED BY THE SECURITIES EXCHANGE ACT OF 1934 IF A
7 CHIEF EXECUTIVE OFFICER, CONTROLLER, CHIEF FINANCIAL OFFICER, CHIEF
8 ACCOUNTING OFFICER, OR ANY PERSON SERVING IN AN EQUIVALENT POSITION FOR
9 THE ISSUER WAS EMPLOYED BY THAT REGISTERED INDEPENDENT PUBLIC
10 ACCOUNTING FIRM AND PARTICIPATED IN ANY CAPACITY IN THE AUDIT OF THAT
11 ISSUER DURING THE 1-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE
12 INITIATION OF THE AUDIT.

13 **Article - Labor and Employment**

14 3-708.

15 (A) AN EMPLOYER MAY NOT MAKE, ADOPT, OR ENFORCE ANY RULE,
16 REGULATION, OR POLICY PREVENTING AN EMPLOYEE FROM DISCLOSING
17 INFORMATION TO A GOVERNMENT OR LAW ENFORCEMENT AGENCY, IF THE
18 EMPLOYEE HAS REASONABLE CAUSE TO BELIEVE THAT THE INFORMATION
19 DISCLOSES:

20 (1) A VIOLATION OF A STATE OR FEDERAL STATUTE, RULE, OR
21 REGULATION; OR

22 (2) A VIOLATION OF FIDUCIARY RESPONSIBILITY BY A CORPORATION OR
23 LIMITED LIABILITY COMPANY TO ITS SHAREHOLDERS, INVESTORS, OR EMPLOYEES.

24 (B) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE FOR:

25 (1) DISCLOSING INFORMATION TO A GOVERNMENT OR LAW
26 ENFORCEMENT AGENCY, IF THE EMPLOYEE HAS REASONABLE CAUSE TO BELIEVE
27 THAT THE INFORMATION DISCLOSES:

28 (I) A VIOLATION OF A STATE OR FEDERAL STATUTE, RULE, OR
29 REGULATION; OR

30 (II) A VIOLATION OF FIDUCIARY RESPONSIBILITY BY A
31 CORPORATION OR LIMITED LIABILITY COMPANY TO ITS SHAREHOLDERS, INVESTORS,
32 OR EMPLOYEES;

33 (2) REFUSING TO PARTICIPATE IN AN ACTIVITY THAT WOULD RESULT
34 IN:

35 (I) A VIOLATION OF A STATE OR FEDERAL STATUTE, RULE, OR
36 REGULATION; OR

1 (II) A VIOLATION OF FIDUCIARY RESPONSIBILITY BY A
2 CORPORATION OR LIMITED LIABILITY COMPANY TO ITS SHAREHOLDERS, INVESTORS,
3 OR EMPLOYEES; OR

4 (3) HAVING EXERCISED THE EMPLOYEE'S RIGHTS UNDER SUBSECTION
5 (A) OF THIS SECTION OR ITEMS (1) AND (2) OF THIS SUBSECTION IN ANY FORMER
6 EMPLOYMENT.

7 (C) AN EMPLOYER SHALL PROMINENTLY DISPLAY A NOTICE IN LETTERING
8 LARGER THAN 14 POINT TYPE:

9 (1) DESCRIBING AN EMPLOYEE'S RIGHTS AND RESPONSIBILITIES
10 UNDER THIS SECTION; AND

11 (2) LISTING THE TELEPHONE NUMBER OF THE WHISTLEBLOWER
12 HOTLINE ESTABLISHED UNDER TITLE 6, SUBTITLE 3 OF THE STATE GOVERNMENT
13 ARTICLE.

14 (D) IN ADDITION TO ANY OTHER PENALTIES, AN EMPLOYER THAT IS A
15 CORPORATION OR LIMITED LIABILITY COMPANY IS LIABLE FOR A CIVIL PENALTY
16 NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION.

17 (E) THIS SECTION DOES NOT APPLY TO RULES, REGULATIONS, OR POLICIES
18 THAT IMPLEMENT, OR TO ACTIONS BY EMPLOYERS AGAINST EMPLOYEES WHO
19 VIOLATE, THE CONFIDENTIALITY OF THE LAWYER-CLIENT PRIVILEGE, THE
20 PHYSICIAN-PATIENT PRIVILEGE, OR TRADE SECRET INFORMATION.

21 **Article - State Finance and Procurement**

22 13-205.

23 (a) A unit:

24 (1) shall draft specifications to encourage maximum practicable
25 competition without modifying the requirements of the State; and

26 (2) may not draft specifications to favor a single prospective bidder or
27 offeror.

28 (b) A unit shall require a prospective bidder or offeror of supplies or
29 construction to state in the bid or offer:

30 (1) whether the procurement will or may include recycled materials; and

31 (2) the types, amounts, and application of recycled materials that the
32 bidder or offeror intends to include in the procurement.

33 (C) (1) IN THIS SUBSECTION, "COMPENSATION" INCLUDES SALARIES,
34 WAGES, COMMISSIONS, BONUSES, STOCK OPTIONS, AND PERFORMANCE
35 INCENTIVES.

1 (2) A UNIT SHALL REQUIRE A BIDDER OR OFFEROR TO ATTACH TO THE
2 BID OR OFFER A STATEMENT OF THE COMPENSATION OF EACH EMPLOYEE OF THE
3 BIDDER OR OFFEROR.

4 (3) IF THE BIDDER OR OFFEROR HAS MORE THAN 25 EMPLOYEES, THE
5 BIDDER OR OFFEROR MAY COMPLY WITH PARAGRAPH (2) OF THIS SUBSECTION BY
6 STATING, FOR EACH JOB CLASSIFICATION, THE NUMBER OF EMPLOYEES IN THAT
7 CLASSIFICATION AND THE HIGHEST AND LOWEST COMPENSATION OF EMPLOYEES
8 IN THAT CLASSIFICATION.

9 13-210.

10 (b) (1) Subject to Title 10, Subtitle 6, Part III of the State Government
11 Article:

12 (i) a summary of the final evaluation of a proposal shall be open to
13 public inspection;

14 (ii) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
15 after an award, all proposals shall be open to public inspection; and

16 (iii) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
17 at and after bid opening, the contents of a bid and any document submitted with the
18 bid shall be open to public inspection.

19 (2) Except as otherwise provided in this section, Title 10, Subtitle 6, Part
20 III of the State Government Article shall govern any request for the disclosure of
21 information related to a procurement.

22 (3) THE STATE MAY DISCLOSE THE INFORMATION REQUIRED TO BE
23 SUBMITTED UNDER § 13-205(C) OF THIS SUBTITLE ONLY IF A PERSON IS AWARDED A
24 PROCUREMENT CONTRACT.

25 **Article - State Government**

26 **SUBTITLE 3. WHISTLEBLOWER HOTLINE.**

27 6-301.

28 (A) THE OFFICE SHALL ESTABLISH AND MAINTAIN A WHISTLEBLOWER
29 HOTLINE TO RECEIVE CALLS FROM PERSONS WHO HAVE INFORMATION REGARDING
30 POSSIBLE VIOLATIONS OF STATE OR FEDERAL STATUTES, RULES, OR REGULATIONS,
31 OR VIOLATIONS OF FIDUCIARY RESPONSIBILITY BY A CORPORATION OR LIMITED
32 LIABILITY COMPANY TO ITS SHAREHOLDERS, INVESTORS, OR EMPLOYEES.

33 (B) THE OFFICE SHALL REFER CALLS RECEIVED ON THE WHISTLEBLOWER
34 HOTLINE TO THE APPROPRIATE GOVERNMENT AUTHORITY FOR REVIEW AND
35 POSSIBLE INVESTIGATION.

1 (C) DURING THE INITIAL REVIEW OF A CALL RECEIVED BY THE
2 WHISTLEBLOWER HOTLINE, AN EMPLOYEE OF THE OFFICE OR APPROPRIATE
3 GOVERNMENT AGENCY SHALL HOLD IN CONFIDENCE INFORMATION DISCLOSED
4 THROUGH THE HOTLINE, INCLUDING THE IDENTITY OF THE CALLER DISCLOSING
5 THE INFORMATION AND THE EMPLOYER IDENTIFIED BY THE CALLER.

6 8-505.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (2) "BUSINESS ENTITY" INCLUDES:

10 (I) A CORPORATION;

11 (II) A LIMITED LIABILITY COMPANY;

12 (III) A LIMITED LIABILITY PARTNERSHIP;

13 (IV) A LIMITED PARTNERSHIP;

14 (V) A LIMITED LIABILITY LIMITED PARTNERSHIP;

15 (VI) A PROFESSIONAL CORPORATION; AND

16 (VII) A BUSINESS TRUST.

17 (3) "COMPENSATION" INCLUDES SALARIES, WAGES, COMMISSIONS,
18 BONUSES, STOCK OPTIONS, AND PERFORMANCE INCENTIVES.

19 (B) THIS SECTION APPLIES TO:

20 (1) ANY FOR PROFIT BUSINESS ENTITY; AND

21 (2) ANY NONPROFIT BUSINESS ENTITY WITH GROSS REVENUES
22 EXCEEDING \$1 MILLION IN THE PRECEDING FISCAL YEAR.

23 (C) (1) A BUSINESS ENTITY THAT RECEIVES A MONETARY GRANT OF ANY
24 KIND FROM A UNIT OR INSTRUMENTALITY OF STATE GOVERNMENT SHALL DISCLOSE
25 TO THAT UNIT OR INSTRUMENTALITY THE COMPENSATION OF EACH EMPLOYEE OF
26 THE BUSINESS ENTITY.

27 (2) IF THE BUSINESS ENTITY HAS MORE THAN 25 EMPLOYEES, THE
28 BUSINESS ENTITY MAY COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION BY
29 STATING, FOR EACH JOB CLASSIFICATION, THE NUMBER OF EMPLOYEES IN THAT
30 CLASSIFICATION AND THE HIGHEST AND LOWEST COMPENSATION OF EMPLOYEES
31 IN THAT CLASSIFICATION.

32 (D) INFORMATION DISCLOSED UNDER SUBSECTION (C) OF THIS SECTION IS A
33 PUBLIC RECORD AND SHALL BE OPEN TO INSPECTION UNDER TITLE 10, SUBTITLE 6
34 OF THIS ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2003.